

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Bivas Pattanayak

C.R.A.13 of 2015
with
CRAN 1 of 2015 (old No. CRAN 360 of 2015)

Raj Kumar Pal @ Palan
-Vs-
State of West Bengal

For the Appellant : Mr. Jagannath Ganguly, Adv.

For the State : Mr. S. G Mukherji, learned P.P.
Mr. N. P. Agarwal, Adv.
Mr. P. P. Das, Adv.

Heard on : 21st February, 2022

Judgment on : 21st February, 2022

Joymalya Bagchi, J. :-

With the consent of the parties, the appeal is taken up for hearing.

The appeal is directed against the judgment and order of conviction and sentence dated 25.11.2014 and 26.11.2014 respectively passed by the learned Additional District & Sessions Judge, 2nd Court, Krishnagar, Nadia, in Sessions Trial Case No. 1(IX) of 2014 arising out of Sessions Case No. 3(2) of 2014 (Spl.) convicting the appellant for commission of offence punishable under Section 376(2)(i) of the Indian Penal Code and Section 6 of Protection of Children from Sexual Offences Act and sentenced him to

suffer imprisonment for ten years and to pay a fine of Rs. 5,000/-, in default to suffer further rigorous imprisonment for a period of three months more.

Prosecution case, as alleged, against the appellant is to the effect that on 05.05.2013 at 3.30 p.m. minor daughter of the de facto complainant/P.W. 1 was subjected to penetrative sexual assault by the appellant who is the uncle of the father of the victim. Minor girl disclosed the incident to her mother and F.I.R. came to be registered. Victim was medically treated at Aronghata B.P.H.C. and then at Ranaghat S.D. Hospital. Her statement was recorded before the learned Magistrate. Appellant was arrested and charge-sheet was filed. Charges were framed against the appellant under Section 376(2)(i) of the Indian Penal Code and Section 6 of Protection of Children from Sexual Offences Act. The appellant pleaded not guilty and claimed to be tried. In conclusion of trial, the appellant was convicted and sentenced, as aforesaid.

Mr. Ganguly, learned Counsel appearing for the appellant argues that the prosecution case suffers from various inconsistencies and contradictions. The appellant has been falsely implicated in the instant case due to a land dispute. There is variation in the injuries noted by P.W. 3 and P.W. 5 and the charge of forcible rape is not proved. Hence, conviction of the appellant may be set aside and the appellant is entitled to an order of acquittal.

On the other hand, Mr. Das, learned Counsel appearing for the State argues the version of the victim girl who was aged about 6 years at

the time of the occurrence is corroborated by her relations as well as neighbours. Medical evidence also supports penetrative sexual assault on her. Hence, the appeal is liable to be dismissed.

P.W. 1 is the minor victim who was 8 years old at the time of examination. Trial Court put questions to her which were answered by her intelligently. Being satisfied with her competence to depose, her evidence was recorded. She stated that she used to refer to the appellant as 'Dadu'. On the date of occurrence at about 11-30/12-00 noon when she was returning home after purchasing groceries, the appellant pulled her frock and took her to the courtyard of her 'Jethi' Alpana Pal. There he gagged her mouth and took her to his room. He bit her breasts and committed rape on her. Appellant threatened her not to disclose the incident to anyone. She narrated the incident to her mother. She was taken to Dhantala Police Station by her parents and thereafter to the hospital. Doctor examined her and thereafter she was taken to Ranaghat court where she made statement before the learned Magistrate. She was extensively cross-examined. However, no significant variation or contradiction was elicited from the minor during cross-examination.

Her deposition is supported by her mother (P.W. 2) and her father (P.W. 6).

P.W. 2 is the mother of the victim and informant in the instant case. She stated that the appellant is their relative and adjacent neighbour. At the time of the incident she was sleeping in the house. Her daughter returned to home and she found bite marks on her breast.

Initially her daughter was unable to disclose anything. Upon persuasion she narrated the incident to her. Thereafter, she lodged complaint to Dhantala Police Station. She put signature on the written complaint marked as 'Exhibit – 2'. In cross-examination, she deposed that her father-in-law purchased some land for extending his house and the appellant had also purchased an adjacent plot together with dwelling house about four years ago. Their house is situated behind the house of the appellant.

P.W. 6, father of the victim girl, has also corroborated his minor daughter. He deposed at the time of the incident he was in his hotel. He received telephonic information from his wife and returned home. Her daughter disclosed the incident to him and his wife lodged complaint at Dhantala Police Station. Her daughter was taken to Aronghata B.P.H.C. and therefrom to Ranaghat S.D. Hospital. In cross-examination, he denied the suggestion that there was dispute between the appellant and his father over land.

Evidence of the relations are corroborated by the neighbours, namely, P.Ws. 7 and 8 who stated upon hearing hue and cry they came to the spot and found P.W. 2 and her daughter weeping. On query, the victim narrated the incident to them. They noticed bite marks on her breast.

Medical evidence is led by P.W. 3 and P.W 5 who treated the victim.

P.W. 5, Dr. Jayanta Sarkar, treated the victim at Aronghata B.P.H.C. He found bruise mark over chest area. He referred her to Ranaghat S.D. Hospital. The emergency ticket was prepared and signed by him marked as 'Exhibit-5'.

P.W. 3, Dr. Amit Mukherjee, examined the victim at Ranaghat S.D. Hospital. He found bite marks over both breast with swelling. He noted swelling over vulva region, reddish appearance of fourchette. He found hymen was intact but tenderness on vulva region. He proved the injury report marked as 'Exhibit-3'.

Analysis of the aforesaid evidence shows version of the minor victim (P.W.1) is not only corroborated by her parents, namely, P.W. 2 and P.W. 6 but also the neighbours. Medical evidence on record also supports the sexual assault on the victim. Both the doctors found injuries on her breast and swelling in and around the vulva region. No doubt, P.W. 3 found hymen of the victim intact. It is settled law that slight penetration is sufficient to prove the offence of rape. Hence, non-rupture of hymen does not improbabilise the allegation of rape particularly when injuries were found on the private parts including fourchette and vulva of the minor girl.

Thus, I am of the opinion that the version of the minor is reliable and inspires confidence. Plea with regard to enmity is vague and not probalised through evidence on record. Appellant was the uncle of the father of the victim and his house was adjacent to that of the victim. In fact, close proximity between the appellant and the victim is established and proababilises the circumstances which save opportunity to the appellant to predate on the minor. Merely because the appellant was an adjacent house owner, one cannot infer dispute between them. On the contrary, P.W. 6 has squarely denied the suggestion of land dispute. No

material by way of documentary or oral evidence is produced by the defence to probabalise the plea of enmity.

In view of the aforesaid discussion, I am of the view that conviction and sentence imposed on the appellant is liable to be upheld.

The appeal is, accordingly, dismissed.

In view of dismissal of the appeal, the connected application being CRAN 1 of 2015 (old No. CRAN 360 of 2015) also stands dismissed.

Period of detention suffered by the appellant during investigation, enquiry and trial shall be set off from the substantive sentence imposed upon the appellant in terms of Section 428 of the Code of Criminal Procedure.

Lower court records along with a copy of this judgment be sent down at once to the learned trial court for necessary action.

Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

I agree.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)